

**EXPLANATORY MEMORANDUM TO**  
**THE SCHOOL ORGANISATION (REMOVAL OF FOUNDATION,  
REDUCTION IN NUMBER OF FOUNDATION GOVERNORS AND ABILITY  
OF FOUNDATION TO PAY DEBTS) (ENGLAND) REGULATIONS 2007**

**2007 No. 3475**

1. This explanatory memorandum has been prepared by The Department for Children, Schools and Families and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

The term 'foundation', in relation to a foundation or voluntary school, is defined in section 21 of the School Standards and Framework Act 1998. The statutory purpose of a foundation is to hold land on trust for one or more schools; a foundation may also appoint 'foundation governors' to those schools.

Sections 25 to 27 of the Education and Inspections Act 2006 provide that where

- i. a foundation school with a foundation is established or a foundation school has "acquired" a foundation under the provisions of the Education and Inspections Act 2006;

a governing body may publish proposals to end its relationship with its foundation, or, where a foundation appoints a majority of governors to the governing body, reduce the power of appointment from a majority to a minority. In addition, a prescribed proportion of the governing body may require the whole governing body to publish such proposals.

These regulations set out the procedures for making such changes, and the prescribed proportion that may require the governing body to publish proposals, as well as the proportion of the governing body that must be in favour of such a change in certain circumstances. They also make provision for the transfer of land from the foundation to the governing body where a foundation is removed; and for compensation and dispute resolution in respect of land transfers.

The regulations also specify the conditions relating to the inability of a foundation to pay debt which must be met before the Secretary of State may make an order to transfer land from the foundation to the school governing body.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None.

4. **Legislative Background**

These regulations are made under

- 8A(2)(d) and (3) of Schedule 22 to, and section 138 of, the School Standards and Framework Act 1998;
- sections 19(3) and 210(7) of the Education Act 2002; and
- sections 25(5) and (6), 26, 27 and 181 of the Education and Inspections Act 2006.

5. **Extent**

These regulations apply to England only.

6. **European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. **Policy background**

- 7.1 The policy background is set out in the Department for Education and Skills White Paper *Higher Standards, Better Schools for All*, published in October 2005. The objective of the policy is to spread innovation and diversity across the whole school system by encouraging schools to acquire foundations (also to be known as Trusts, and the schools as ‘Trust Schools’). The membership of these foundations might consist of a wide range of partner organisations with expertise to contribute to the governance of schools and the provision of education.
- 7.2 Although a school’s relationship with a foundation is designed to be lasting, the involvement of these partners in a binding governance relationship with a school necessitates safeguards to deal with changing circumstances. Sections 25-27 of the Education and Inspections Act therefore provide a mechanism for a governing body to remove a school’s foundation without requiring a school to be closed. This might be desirable where, for example, parents were dissatisfied with the ethos of the school or where a foundation had become ineffectual. Where the foundation appoints a majority of the governing body, reducing the number of governors appointed by the foundation is an alternative option open to the governing body.
- 7.3 The procedures are intended to mirror those for acquiring a foundation, or giving a foundation the power to appoint the majority of governors. Like those procedures, they involve the publication of proposals and a period for representations, thereby ensuring that parents and other stakeholders have the

opportunity to make their views known. There are different procedures for the removal of a foundation depending on whether the foundation appoints a minority or a majority of governors, since it is unlikely that a governing body to which an ineffectual foundation appointed a majority of the governors would vote for the removal of the foundation or a reduction in the number of governors appointed by that foundation. Statutory guidance in relation to these procedures will be published by the Department to coincide with the coming into force of these regulations.

- 7.4 The procedures provided for by these regulations apply only to the foundations of foundation schools acquired under the Education and Inspections Act 2006 or schools established under that Act. This means that schools which already had a foundation before the commencement of that Act – which will often have been in place for many years – will not be caught by these provisions.
- 7.5 Where a foundation holds publicly provided land, this will transfer to the governing body of the school in the event that a foundation is removed. Land might not be transferred where it had been provided by the foundation originally, rather than the local authority or governing body; where it does transfer, compensation must be agreed.
- 7.6 Where land which forms part of the school premises does transfer to the governing body but the foundation has previously incurred capital expenditure on the land, the governing body may be required to pay compensation to the foundation. Conversely, where land which forms part of the foundation premises is not transferred to the governing body and where the governing body or local authority has incurred expenditure in relation to this land, the foundation may be required to pay compensation to the governing body or local authority. These matters must be settled before any proposals to remove a school's foundation may be published, with the dispute referred to the Schools Adjudicator for resolution if necessary. Guidance on the transfer of land when a foundation is removed forms part of *The Transfer and Disposal of School Land in England*, which is available from Teachernet (<http://www.teachernet.gov.uk/docbank/index.cfm?id=11650>) and will be updated to coincide with the coming into force of these regulations.
- 7.7 Consultation on the draft Regulations took place between 13 November 2006 and 4 February 2007. Details of the consultation exercise, and a summary of responses, are available on the DCSF website at <http://www.dcsf.gov.uk/consultations/>.
- 7.8 The Department consulted generally on the suite of School Organisation regulations, and in respect of these regulations, specifically on the period of time that must elapse following the acquisition or establishment of the foundation, or the previous proposals to remove the foundation, before a minority of governors may require proposals to be published for the removal of the foundation or a reduction in the number of governors appointed by the foundation. In light of responses to consultation, this time period has been reduced from seven to five years. This was the only significant issue raised by

the consultation in respect of these regulations.

8. **Impact**

An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies that do not form or form part of school foundations, which they will only do on a voluntary basis.

The impact of the instrument on the public sector will fall on those publishing proposals. The impact will be minor, since the proposals published in accordance with these regulations will relate solely to the governing body of the school in question. The Department provides extensive guidance together with an on-line tool to enable them to build statutory notices and both will incorporate the proposed changes when the regulations come into force.

9. **Contact**

Marc Rooney at the Department for Children, Schools and Families Tel: 0207 925 6186 e-mail: [marc.rooney@dcf.gsi.gov.uk](mailto:marc.rooney@dcf.gsi.gov.uk) can answer any queries regarding the instrument.